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SUBJECT: JUDGING DIMA - MEDVEDEV STEPS OUT AGAINST LEGAL NIHILISM

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Classified By: CDA Daniel A. Russell. Reason: 1.4 (d).

¶1. (C) Summary. Two seemingly unrelated events -- Medvedev's launch of two commissions to tackle corruption and judicial reform and the unprecedented public exposure of Kremlin pressure on the courts -- have re-kindled optimism about tackling "legal nihilism" under the new president's leadership. The collapse of the defamation case against popular TV personality Vladimir Solovyev, who had claimed undue Kremlin influence over the Arbitrash Court and then backed it with unprecedented testimony from one of the court's top judges, reinforced Medvedev's message and provided a signal for change. The dismissal of a Arbitrash appellate judge on corruption allegations and a less celebrated procedural change last month to limit the tax police's ability to confiscate property suggest (at least to some) a renewed determination to rein in the courts as a tool for "raiding" other enterprises. In conversations with Embassy, Solovyev and other "progressive" Kremlin watchers have tempered their optimism with a healthy respect for the forces arrayed against Medvedev's reform agenda, with Anti-corruption Committee member Mikhail Barshchevskiy underscoring that efforts would be focused on preventing future corruption, not investigating past offenders. In contrast, Moscow's experienced skeptics like Sergey Zverev persist in seeing the entire proceedings as farce -- a political campaign and nothing more. End Summary.

Once More, With Feeling

¶2. (SBU) Assessments of Medvedev's judicial and anti-corruption programs generally start with the reminder that Putin too began his tenure as President with a similar agenda. On May 20, Medvedev indirectly paid homage to Putin when he announced the creation of a "blue ribbon" commission to make recommendations for judicial reform by noting that the legal system had come a long way under his predecessor. He reiterated his goal of creating an "independent" judiciary as a means to re-build public trust in the courts. He appointed the Head of the Government-Legal Department in the Presidential Administration (PA), Larisa Brycheva to head the commission, but the expectation is that Anton Ivanov, Chief Judge of the Supreme Arbitrash Court and a close friend to Medvedev, will be the driving force behind the reforms.

¶3. (SBU) The roll-out of the judicial reform campaign followed only a day after Medvedev established a new anti-corruption commission, with himself as the chairman. PA Head Sergey Naryshkin, a classmate of Putin's from the KGB intelligence school, heads the commission's presidium and will supervise commission's work, which will be divided into four working groups: legislative support, improving government administration, increasing the effectiveness of law enforcement, and "educational" work. The commission's presidium is packed with government heavyweights, balancing siloviki chieftains (FSB Head Bortnikov, Prosecutor Chayka,

and MVD Chief Nurgaliev) and Medvedev's crew of "liberal" reformers (Vice Premier Sobyanin, Justice Minister Konovalov, Economic Development Minister Nabiullina, and PA Assistants Brycheva and Dvorkovich). Notably, Premier Putin is not directly involved in the work of either commission, although he has spoken out in support of Medvedev's project.

Winds of Change at the Arbitrash Court

¶4. (SBU) Events on the ground connected with the Arbitrash Court, which hears disputes betwixt corporations and between corporations and state entities, such as tax and customs authorities, reinforced Medvedev's message about the need for legal reform. The Arbitrash Court system has long been the instrument for "raiding" -- the use of illegal means to expropriate property -- since almost all important business disputes are fought out in their courtrooms. Although most contacts consider Chief Judge Ivanov to be an intelligent and sophisticated reformer (a characterization born out by our first hand observations), the Arbitrash courts as a whole are widely perceived as corrupt and politically influenced (reftel). Our contacts within the legal community tell us that cleaning up the Arbitrash courts is essential to establishing the rule of law and creating a stable business climate.

¶5. (SBU) Perhaps most significant event related to the Arbitrash Court was the collapse last week of the defamation case against popular TV and radio personality Vladimir Solovyev after unprecedeted court testimony by the court's Deputy Chief Judge Yelena Valyavina that she had been

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pressured by the Presidential Administration to make certain rulings. The case had been brought by the head of the PA's cadre bureau Valeriy Boyev, an ally of former Presidential Assistant Viktor Ivanov. Boyev took offense at Solovyev's public allegations, which said that Boyev controlled the Arbitrash Court system, and he sued for defamation. At the trial, Valyavina said that Boyev threatened to prevent her re-appointment as Deputy Chief Judge if she did not accede to his demands to reverse certain rulings in a major corporate litigation in late 2005. Valyavina also testified that she had been told that Boyev had tried to pressure one of her colleagues on the Supreme Arbitrash Court in a similar manner. According to published reports, Boyev withdrew his claim after Solovyev threatened to call more judges as witnesses.

¶6. (SBU) In a second unrelated incident, Anton Ivanov publicized his official complaint accusing Lyudmila Maikova, the Chief Judge of the Moscow Region Arbitrash Court, which hears appeals from Arbitrash courts of first instance, of improprieties in connection with acquisition and sale of apartments in Moscow. According to published reports, the complaint alleges that she had the active assistance of the Moscow mayor's office in these transactions and that she presided over cases involving companies involved in these same transactions. The complaint will now be sent to the Supreme Judicial Qualifying Collegium for a hearing. The hearing must be attended by at least half of the Collegium's 25 members and removal of a judge at Maikova's level requires a two-thirds vote of those present. As far as we are aware, this is the first time that such a complaint has been filed against such a high ranking member of the Arbitrash court system.

¶7. (SBU) Third, in early April, the Supreme Arbitrash Court issued a ruling restricting the Russian Federal Tax Service (RFTS) authority to confiscate property under Article 169 of the Civil Code. Prior to the ruling, the FTS had authority to confiscate all property involved in a transaction that it deemed "illegal and amoral." However, the ruling clarified that in order to seize property under Article 169, the FTS must prove in court that at least one of the parties to the

transaction knowingly intended to conclude an illegal or immoral transaction, a much higher burden of proof, which will significantly limit the FTS' power to confiscate property arbitrarily.

¶8. (C) Changes at the Arbitrash court have raised cautious expectations in legal circles for real change under Medvedev.

As far as we know, this is the first time that a judge at Valyavina's level has explicitly and publicly acknowledged corruption in the judicial system. (Although the relative lack of public outrage over Valyavina's testimony, which is the rough equivalent of a U.S. Supreme Court Justice offering sworn testimony that the White House had tried to corruptly influence a Court ruling, is indicative of the Russian public's apathy and cynicism about the court system.) One lawyer who specializes in arbitrash litigation was stunned that Valyavina had testified in court about judicial corruption and expressed optimism that this would signal a broader cleanup of the court system. Leonid Nikitinskiy, a legal journalist, said that he believes that Medvedev is attempting to develop the legal community as a power base to counter the siloviki and said that his recent statements were sending a signal to other government officials which would at least force them to feign respect for the rule of law. However, he cautioned that it is still too early to say what, if anything, will be the ultimate outcome.

Solovyev Exuberant

¶9. (C) In a May 23 meeting, a crowing and still-combative Solovyev told us that Boyev's withdrawal of the lawsuit was a significant victory, which he read as a "message" from the Kremlin that the rules were changing. However, in between fielding congratulatory telephone calls, Solovyev put his legal victory in the context of a "totally corrupted" system, in which all parties would work to undermine reform efforts: corrupt judges would seek to protect their income flows, lawyers would prefer to buy their victories than have to secure them in the courtroom, businesses (in particular, governmental parastatals) would continue to prefer the predictability that came with having judges in their back pocket, and government bureaucrats and crooked security services personnel would fight hard to keep their place at the trough. Solovyev repeated accusations published on his website of harassment by the "services," including surveillance and the tapping of his telephones. "As long as I am still alive," he joked, "this is a good news story."

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¶10. (C) Solovyev argued that corruption was Putin's greatest lacunae - the agenda item that he never had time to address during his eight years. A defender of Putin (and author of a recent, flattering book profiling the former Russian President), Solovyev explained that he asked Putin on the margins of an August 2007 press gathering in Sochi whether he should desist in his campaign against corruption of the Arbitrash Courts. Putin's reply, according to Solovyev, was encouragement to push on. Solovyev maintained that on more than one occasion Putin rebuffed efforts by then FSB Chief Patrushev to exact revenge for Solovyev's charges of corruption in the security services. Solovyev assessed that Medvedev was "doing all the right things" during his first days in office to back up his campaign pledge to end legal nihilism. In focusing on corruption and the judiciary, Solovyev noted that he would inevitably cross the interests of important figures in Putin's inner circle; the timing and pace of Medvedev's initiatives and how he managed these conflicts of elite interest would provide public benchmarks on what he predicted would become an increasingly self-confident Medvedev administration.

A Dose of Skepticism

¶11. (C) Recent appointee to Medvedev's corruption commission, Mikhail Barshchevksiy - the Presidential representative to the Constitutional, Supreme, and Arbitrash Courts and leader of the Kremlin-linked liberal political party Civil Force - expressed quiet optimism that Medvedev was serious about judicial reform, but was cagey about making any predictions about his prospects for success. He saw a transition underway as the siloviki who Putin had used to build a structure for ruling Russia lost their relevance. He dismissed former Kremlin gray cardinal Igor Sechin's new position Deputy Premier overseeing industrial policy as essentially superfluous, the bureaucratic equivalent of retirement. They weren't going to go quietly, however, and Barshchevskiy told us that he expects rigorous opposition to reform, even with Putin's support for Medvedev. He also expressed concern that the September 1 deadline for recommendations would lead to a rushed assessment.

¶12. (C) Barshchevskiy made clear that Medvedev's effort was not designed at prosecuting corrupt officials for past misdeeds, but at establishing the legislative framework for preventing future abuse. He noted that an independent media was indispensable to the effort, a point in had underscored in private meetings with Medvedev. Less effusive about the new President than in previous meetings, Barshchevskiy said the jury was still out, even if Medvedev's first forays struck him as credible.

¶13. (C) On a more cautious note, Carnegie Center's Masha Lipman argued that since the same (if reshuffled) elite remained in power, there were clear limits on what Medvedev could do, since he was not interested in unraveling the current network of power -- whose "cobweb" of backroom deals and payoffs could not withstand a truly independent judiciary. Former Yeltsin PR guru Sergey Zverev was even more dismissive, citing the pervasive corrosion of corruption in Russian society as beyond the state's capacity. He deemed Medvedev's anti-corruption and judicial reform programs as window-dressing, a populist political campaign that the ruling elite could bandwagon without any real chance of success.

Comment

¶14. (C) What we see in Medvedev's reforms and, perhaps even more unexpected, in the changes at the Arbitrash Court are only the shadows of a more inscrutable process underway within the elite. Taken in conjunction with the apparent demotions of powerful silovik players in the government and PA reshuffle, the collapse of the case against Solovyev has encouraged Medvedev's supporters and reinvigorated the debate about his strategic vision. Putin's official position on the sidelines suggests that this is Medvedev's baby - an opportunity for him to leverage his skills and legal knowledge to burnish his presidential image. It remains to be seen how far Medvedev will go. Our first indicators are likely to come in the fall, when the administration reacts to the commissions' recommendations, but the real test will come with implementation. Medvedev says he wants to end the phenomenon of "telephone" justice in Russia. Making that happen would require some substantial changes in the Putin system and the expenditure of enormous political capital that Medvedev has yet to accumulate.

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